

**IN THE
SUPREME COURT OF MISSOURI**

Thomas G. (Jerry) and Nancy S.THOMPSON, Richard)	
MONTGOMERY, James R. and Barbara M.CAMPBELL,)	
M. Scott and Stacy HAUSMAN (Hausman Trust), William)	
M. McDANIEL, Ralph C. McDANIEL, Stanley (Liston) and)	
Martha KING, and Patricia HOFF,)	
)	
Appellants,)	
)	No. SC85225
v.)	
)	<u>Oral Argument</u>
)	<u>Requested</u>
)	
Clark HUNTER – Morgan County Collector, MORGAN)	
COUNTY R-II SCHOOL DISTRICT, and Jeremiah NIXON)	
,Attorney General of the State of Missouri,)	
)	
Respondents.)	

Appeal from the Morgan County Circuit Court
Twenty-Sixth Judicial Circuit
Honorable Mary Dickerson

APPELLANTS' SUPPLEMENT TO INITIAL BRIEF

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PEACE & JOHNSON, L.L.C.**
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ATTORNEYS FOR APPELLANTS

POINTS RELIED ON

I. The Circuit Court erred in dismissing Declaratory Judgment Counts I, II, and III of Appellant taxpayers' Petition, seeking construction of Sections 11 and 22(a) of Article X of the Missouri Constitution, and seeking construction of Section 22(a) with state financial aid statutes contained in Chapter 163 R.S.Mo, by making the substantive determination that Section 11, Article X of the Missouri Constitution authorized defendants to establish a \$2.75 levy without voter approval, because the court in considering a motion to dismiss is limited to determining whether the allegations in the petition are sufficient to state a claim, in that the Circuit Court exceeded its role by reaching the merits of the taxpayers' claims in ruling on motion to dismiss, thereby depriving the taxpayers of the opportunity to present evidence and law in support of these counts.

Principal Authorities Relied Upon

Nicolai v. City of St. Louis, 762 S.W.2d 423, 425 (Mo. banc 1988)

Roberts v. McNary, 636 S.W.2d 332, 337 (Mo. banc 1982)

II. The Circuit Court erred in dismissing Declaratory Judgment Counts I, II, and III of taxpayers' Petition on the ground that they were "claims with respect to the property taxes for the 1999 and 2000 tax years" and were untimely as "not asserted until after those taxes became due and payable," because the Circuit Court misinterpreted the nature of the 1999 and 2000 allegations, and erroneously applied precedent pertaining to Constitutional

refund claims, in that these allegations constituted the basis for the Declaratory Judgment Counts, not separate refund claims for the 1999 and 2000 years, and were timely filed.

Principal Authorities Relied Upon

R.S.Mo § 139.031

Mo. Const. Art. X, § 23

Ring v. Metropolitan St. Louis Sewer Dist., 969 S.W.2d 718, (Mo. banc 1998)

City of Hazelwood v. Peterson, 48 S.W.3d 36 (Mo. banc 2001)

III. The Circuit Court erred in dismissing Declaratory Judgment Counts I, II, and III of Appellant taxpayers' Petition, seeking interpretations of Sections 11 and 22(a) of Article X of the Missouri Constitution with one another, and seeking interpretation of Section 22(a) with state financial aid provided pursuant to Chapter 163 R.S.Mo, on the substantive ground that Section 11 of Article X of the Missouri Constitution authorized defendants to establish a \$2.75 levy without voter approval, because this substantive determination erroneously applied the law in that:

A. The Adoption of Amendment 2 Amending Section 11 of Article X in 1998 did not authorize Respondent School District to increase its tax levy rate to \$2.75, which was higher than its maximum authorized current levy allowed under Section 22(a) of Article X, without voter approval therefore, and Count I should have been substantively determined in favor of Appellants.

B. Assuming Respondent School District’s 2000 maximum authorized current levy rate was \$2.75, in 2001 when total assessed valuation growth exceeded the rate of growth in the price index, Section 22(a) of Article X required the levy rate to be reduced, because Section 11 of Article X did not authorize the levy rate to be left at \$2.75 without voter approval, and Count II should have been substantively determined in favor of Appellants.

C. If Respondent School District in 2001 had reduced its levy below \$2.75 pursuant to the requirements of Section 22(a) of Article X, it would not have been subject to reduced or lost state financial aid provided pursuant to Chapter 163 R.S.Mo, and Appellant taxpayers had standing to pursue this declaratory judgment, because the School District’s interpretation that it would lose state aid resulted in direct pecuniary injury to Plaintiffs in the form of a tax rate higher than permitted by Section 22(a) of Article X, and Count III should have been substantively determined in favor of Appellants.

Principal Authorities Relied Upon

Mo. Const. Art. X, § 22(a)

State ex rel. Gordon v. Becker, 49 S.W.2d 146 (Mo 1932)

R.S.Mo § 163.021.2

R.S.Mo § 137.073.1(3)

IV. The Circuit Court erred in dismissing Count IV of the taxpayers’ Petition, seeking a refund of taxes paid under protest pursuant to Section 139.031 R.S.Mo, for failure to state a claim with sufficient specificity because,

the allegations of the Petition that total assessed valuation of property in the School District grew 16% while the general price level grew 3.3% between 2000 and 2001, that the School District's levy rate remained the same from 2000 to 2001, that the School District's 2001 tax rate was unlawfully high in violation of Section 22(a), Article X of the Missouri Constitution, that Appellant taxpayers paid their 2001 taxes under protest pursuant to Section 139.031 R.S.Mo, that they were suing for a refund pursuant to Section 139.031 R.S.Mo, were sufficient to state a claim upon which relief could be granted.

Principal Authorities Relied Upon

R.S.Mo § 139.031

Behrenhausen v. All About Travel, Inc., 967 S.W.2d 213 (Mo.App.W.D. 1998)

Bosch v. St. Louis Healthcare Network, 41 S.W.3d 462, 464 (Mo. 2001)

State ex rel. Harvey v. Wells, 955 S.W. 2d 546 (Mo banc 1997)

V. The Circuit Court erred in dismissing Count V of Appellants' Petition, seeking an award of attorneys fees and costs for successful enforcement of Section 22 of Article X of the Missouri Constitution pursuant to Section 23 of Article X, on the ground that, under the allegations of the Petition Appellants were not entitled to such recovery, because Section 23, Article X of the Missouri Constitution provides that a taxpayer is entitled to costs, including reasonable attorneys' fees, if he successfully brings suit to enforce the provisions of Sections 16-22 of Article X in that the basis of the taxpayers'

lawsuit is the enforcement of Section 22 of Article X, as set forth above in Points I, II, III, and IV, and if the taxpayers are successful, Section 23 of Article X entitled them to attorneys' fees and costs.

Principal Authorities Relied Upon

Mo. Const. Art. X, § 23

City of Hazelwood v. Peterson, 48 S.W.3d 36 (Mo. banc 2001)

Gilroy-Sims & Associates v Downtown St. Louis Business District, 729 S.W.2d 504 (Mo App 1987)

Respectfully Submitted,

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Certificate of Service

The undersigned does hereby certify that the foregoing was mailed, via U.S. Mail, postage prepaid, this 15th day of August, 2003, to all attorneys of record in this proceeding.

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